

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 35 GENERAL CIVIL DIVISION
BEFORE HON. JUSTICE J. O. HARRISON (MRS) JUDGE
TODAY MONDAY THE 15TH DAY OF JANUARY, 2018

SUIT NO: LD/1976/2009

BETWEEN

1. CHIEF MICHAEL OLUWA
2. CHIEF TALIBI MUTAJRU
(DALE OF MESEREKOGO AND OLUWA VILLAGES)
3. MR. MOLIKI ADAMU
4. MR. SURAJU LAMORIU
5. MADAM MUSINATU RAIMI BUSARI
6. MADAM SIKIRATU LAMIDE
7. MR. DAJUDA MOSIRU
8. AL HAJI MUTIU SALAMI
(FOR THEMSELVES AS AND ON BEHALF OF THE
DEDCENDANT OF LATE PA OSONIYE JAGUN OF
OLUWA VILLAGE)

CLAIMANTS

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AND

1. LAGOS STATE GOVERNMENT
2. ATTORNEY GENERAL AND COMMISSIONER OF JUSTICE,
LAGOS STATE
3. PERSON UNKNOWN (A CLASS OF PEOPLE WHO ARE ALLOTTEES,
DEVELOPERS/PRIVATE-PUBLIC PARTNERS OF THE GOVERNMENT
OF LAGOS STATE)
4. ATTORNEY GENERAL OF THE FEDERATION AND MINISTER OF
JUSTICE STRUCK OUT BY ORDER OF COURT DATED 2
6TH MAY, 2010)
5. DALE TOHEEB MUTAINU
6. JIMOH AJAYI (HEAD OF FAMILY)
7. OLUSEGUN ADENIYI
8. ANAFIU ELETU
(FOR THEMSELVES AND ON BEHALF OF THE OGBE ADEYEMI
ADEMOLA FAMILY OF IDI-ORO VILLAGE VIA IBEJU-LEKKI, LGA)
9. SKYE TRUSTEES LIMITED (FORMERLY ELB TRUSTEES LTD)
10. CITY EXPRESS BANK PLC (IN LIQUIDATION BY NDIC)

DEFENDANTS

CHEVRON EMPLOYEES' MULTIPURPOSE COOPERATIVE
SOCIETY LIMITED

PREAMBLE

Judgement is being delivered outside the ninety (90) day time limit prescribed by Section 294 of the Constitution of the Federal Republic of Nigeria 1999 due to the delay (loss of her husband) suffered by the Court and an almost immediate disposition suffered by the Court which required protracted treatment.

The Court is however well abreast of the evidence proffered, the issues in dispute and the submissions of the parties and none of the parties has suffered a miscarriage of justice by reason of the delay thereof.

JUDGEMENT

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Claimants instituted this action in 2003 via a Writ of Summons. The Claimants requested their originating processes.

THE FINAL AMENDED WRIT OF SUMMONS IS DATED 25TH JUNE, 2015 PRAYING FOR FOLLOWING RELIEFS:-

- (i) A declaration that the Claimants are the owners of all that piece or parcel of land measuring approximately 358,344 Hectares or 888,470 acres of land at Abule Oluwa Village, Ibeju Lekki area of Lagos State.
- (ii) A declaration that the Land Use Act though incorporated as part of the Constitution of the Federal Republic of Nigeria 1999 is a legislation that is incapable of operation as such on the ground of its inconsistency
 - (a) with the provisions of the Constitution with respect to the powers respectively exercisable by the Federal Government vis-a-vis the state government and
 - (b) the provisions relating to the Fundamental Right of the Claimants with respect to their right or interest in land and especially with respect to the Claimants' land lying, being and situate at Abule Oluwa Ibeju Lekki, Local Government Lagos State.
- (iii) A declaration that the Governor of Lagos State -- the 1st Defendant and or his designee has no right or power to vest any or purport to have vested any interest in the Claimants' land in any person or persons especially the 3rd, 5th, 5th Defendants as such an exercise not being for public purpose but to vest private interest is unconstitutional null and void.

- (iv) A declaration that any interest acquired by the 3rd -9th Defendants either through the 1st Defendant or its designee is invalid by reason of the 1st Defendant lacking in power or authority to deprive the Claimants' the use and occupation of their land, and exercise of incidental right of ownership thereon, and vesting same in the 3rd -5th -9th Defendants.
 - (v) A declaration that any act or instrument conferring or purporting to confer any right or interest in the land of the Claimants on any or all of the 3rd -5th & 9th Defendants is null and void and ineffectual.
 - (vi) A declaration that the entry of the 1st and 3rd-9th Defendants or any of them is an unlawful act of Trespass.
 - (vii) A sum of ₦100,000,000.00 (One Hundred Million Naira Only) being damages for Trespass against the 1st Defendant for causing an unlawful entry into, and interference with the Claimants' ownership, use of occupation and enjoyment of the land at Abule Oluwa Village, Ibeju Lekki, Local Government, Lagos State, by way of forceful eviction from the said land.
- CERTIFIED TRUE COPY.**
- (viii) A declaration restraining the 1st Defendant as Government of Lagos State or his designee or any one acting through or under him as his agents, privies or any one claiming through or under him from putting into possession of the Claimants land or any part thereof and or maintaining the entry of any such person or persons including but not limited to the 3rd -9th Defendant on the said land.
 - (ix) An order restraining the 1st and 3rd-9th Defendant jointly and severally from entering in or maintaining entry in the land of the Claimant or remaining thereon forthwith.
 - (x) An Order of perpetual injunction against the 1st 2nd & 3rd -9th Defendant respectively or jointly and severally either by themselves or through their agencies or privies from granting entry to or sustaining entry on or claiming the right of entry or maintaining entry in respect of the Claimants land.

to 1st and 2nd Defendants.

and amended Statement of Defence dated 2nd October, 2012, 3rd Defendant were never identified and did not participate in the proceedings 4th Defendant and 10th

ant were struck out by order of Court dated 26th May, 2010 and 11th December, respectively.

¹ Defendant also filed Statement of Defence and frontloaded processes.

of Settlement was entered as Judgement of the Court between the Claimant and Defendants on 11th April, 2013 and with the 11th Defendant on 16th December, 2013. The Claimant filed a reply to Statement of Defence of 1st and 2nd Defendants dated February, 2015.

ommenced on 5th June, 2012 the Claimant called 3 witnesses Defence opened on February, 2015 the 1st and 2nd Defendants called 2 witnesses and the 9th Defendant one witness and closed on 8th February, 2017 written address were adopted by a QShinus R. A. O. Adegoke and Ademola Olowoyeye Esq Counsel for the 1st and Defendants, the 9th Defendant and the Claimant respectively on 8th February, 2017.

IF SUMMARY OF THE MAIN THRUST OF THE PLEADINGS IS AS FOLLOW:-

The Claimants aver that they have been the owners and have been in possession of the land the subject matter of this suit from time immemorial and the revocation of their right and subsequent eviction was invalid.

The 1st and 2nd Defendants averred there was a valid acquisition of the land, there was no application for compensation and same was allocated to individuals and corporate bodies who have been issued Certificates of Occupancy. Pursuant to challenge by a group which included the 2nd Claimant herein, they were settled with alternative land.

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The 9th Defendant contends that the parcel of land was granted in respect of joint venture with Lagos State Government to construct lower/medium or high level houses to hand them over for use for the people of Lagos State.

MARY OF THE EVIDENCE PROFFERED BY THE CLAIMANT IS AS FOLLOWS:-

land surveyor Adelele Adesina adopted his original statement on oath and Further Statement on Oath dated 26th September, 2012 and the following documents were adduced in evidence-

Composite plan dated 1st March 2012 Exhibited C1

Survey Plan NO CSR/LA/92/17 dated 6th June, 1992 prepared by J. I. OGEDENGBE Exhibited C2

Survey Plan NO. AT/LA/127/85 A-C dated 21st July, 1984 prepared by A. T. ADENJI Exhibited C3.

Certified True Copy of Certificate of Occupancy dated 16th June, 2004 Registered as 76/76/2004, and 75/75/2004 in favor of EIB Trustee Ltd. C4 AND C5
Certified True Copy of Official Gazette No.20 Vol.26 (Exhibit C6

The CWI was a former staff in the Surveyor General's Office before he established his own outfit and he prepared a dispute plan LA/1288/2012/001/DISP dated 1st March, 2012.

He proceeded to describe the various portions of land marked ABCDE and F on the composite plan which fall within the vast area acquired by the Lagos State Government and published in the 1993 gazette No. 20 of 1315 and that the Oluwa Village being a settlement, community or village existing before 1993 ought not to be part of the said acquisition and he stated as follows:-

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- (a) Lagos State Government acquired a vast area of land stretching from Haroko Eastwards to the boundary of Lagos State and Ogun State in Eti-Osa Area of Lagos State containing an approximate area of 823.0 square kilometres which was published in the Lagos State Official Gazette No. 20 Vol. 26 of 13th May, 1993;
 - (b) The acquisition excludes all established villages, towns and settlements;
 - (c) The property of Ogbe Adeyemi Ademola Family of Idi-oro Village via Ibeju Lekki is shown in Plan No. AT/LA12/85 A-C made by Surveyor W. T. Adeniji on 21st July, 1984 marked "A" and verged blue;
 - (d) The property of Oluwa Family of Oluwa Villages via Abijo shown on Plan No. CSR/LA92/17 prepared by Surveyor J.I. Ogedegbe on 6th June, 1992 marked "B" AND VERGED RED. Oluwa Villages include Abule Iya Oniresi, Abule Eleye, Abule Panu and Abule Oluwa, which are the land in dispute;
 - (e) The properties marked "A" & "B" referred to in C & D above are established settlements among other settlements within the vast land acquired by Lagos State Government and published in Gazette No. 20 Vol. 26 of 13th May, 1993;
 - (f) The property marked "C" is known and referred to by the Lagos State Government as the ABDO GRA Scheme described on Plan No. LS/D/LA/1215 which also includes the land in dispute and is verged purple;

- (c) The property marked "D" is known and referred to by the Lagos State Government as LSDPC Housing Estate, Eko Akete shown on Plan No. LS/D/LA/1135A which also includes the land in dispute and is verged purple;
- (d) The property marked "E" shown on Plan No. LS/D/LA/1437C is formerly portioned ATLANTIC BEACH RESORT and verged green;
- (e) The property marked "F" is known and referred to as Atlantic Beach Resort shown on Plan No. LS/D/LA 1872 dated 13th June, 2007. This plan supersedes Plan No. LS/D/LA 1437C and LS/D/LA 14370 dated 1st May, 2004 also within the land in dispute verged purple;
- (f) The portion of the property described in (i) above and marked "E" and verged yellow containing an area of 10.037 hectares was excised by the Lagos State Government for the Ogbe Adeyemi family.
- (g) The excised portion for the Ogbe Adeyemi Ademola family falls within the land claimed by the Oluwa family;

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Further stated that the State Governor's Office is where all red copies of survey plans deposited in re land in Lagos State and they are responsible for the production of all plans especially where the dispute is with Lagos State Government.

also stated that all licensed surveyors are competent to make composite plan which compares existing plans and does not contain any new info.

referred that Lagos State Official Gazette 2/26 of 1993 dated 13th May, 1993 officially excluded established villages and settlements within the acquired area.

was duly cross-examined by 1st and 2nd Defendants he stated that the composite related to 4 Villages Oluwa Village, Abule Iya Oniresi, Abule Panu Abule Idi-Oro he said he visited the site when preparing Exhibit C1 but not all the Villages, he utilized LS/D/LA/1872 to prepare Exhibit C1. He also stated that he did not use privileged material pursuant to his position as a former staff of the Surveyor General's office to prepare the said composite plan.

stated he visited the site and that an acquired land belongs to the government and subsequent interest holders derive their title from the government.

-Chief Talib Motairu Oluwa the 2nd Claimant also adopted his statement on oath dated 8th March, 2013 and Further Statement on Oath dated 29th November, 2013 and

He is the head of the Oluwa Family of Oluwa Village and that the land in dispute - 70 acres belongs to his family which they utilised for hunting, and farming activities 1850 and that their boundary men were Oloko-Oba Family, Idogun Family Leso - Labon Family and Iya Iwelekuji. He stated also that their shrine and deities worshipped by them are still utilised until the 1st Defendant came to evict them, the Ogun shrine is still opposite his home at Alule Oluwa. Ancient burial sites are on the land. He stated that no notice of acquisition was served and that it has not been used for public purpose and no compensation was paid.

He stated that the portion of land (200 hectares) granted to the 9th Defendant is not the Claimant's land (vide Certificate of occupancy 75/55/2004k and 75/55/2004r dated 16th June, 2004) and that same is not for a public purpose. He also stated that the land has been parceled out to individuals and they have been evicted from their ancestral homes.

He stated that the gazette specifically excluded from acquisition the right and title of established Villages like the Oluwa Village that was established since 1850 and that no notice of acquisition was served on any member of the Oluwa family.

He stated that the Claimants are deemed holders of the right of occupancy and that right is preserved by the Land Use Act before the land is regarded as state land.

He stated that the gazette was utilized to overturn a Judgement of a Court of competent jurisdiction and that the land was not acquired for public interest.

He entered the following documents which were admitted in evidence-

1. Deed of assignment from Lagos State Government to Bale Oluwa Village and attached site plan Exhibit 1C7A.

2. Aerial photograph Exhibit C8, C8A and C8B

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3. Affidavit in cross examination by 1st and 2nd Defendants he stated that he is a descendant of Oloko-Oba.

4. He contended that they have not been enjoying government presence yet in all their lives.

5. He stated that there were houses on the land and that he had a storey building and he farmed on the land until all the houses was demolished by unknown person.

6. He stated that he was aware of a case instituted in 2004 and that he was one of the witnesses. He stated that it was in respect of land on his mother side while the case in this case is in re land on his father side and that the Claim in the 2 cases was in re wrongful acquisition.

Acquisition of land as no notice was served and they became aware when caterpillars invaded the land and they had to run away which was about 5 years ago.

He also stated that Abijo is a boundary man with Abule Oluwa and they have been in existence a long time ago. He stated that since the government took over nobody has till on the land.

W3 Chief Michael Oluwa adopted his statement on oath he stated he was the head of a Jagun Oshoniyi Oluwa Village and the head of the family.

He 5th - 8th Defendant's descendant of Ogbu Adeyemi Ademola had instituted an action against the Lagos State Government on a parcel of land in Plan No. AT/LA/12/85 A-C (which falls within the Claimant's land) and the Lagos State Government settled same by granting the 5th - 8th Defendants alternative land (104 hectares) as compensation. The said parcel of land falls within the Claimant's land the subject matter of this suit.

W3 also stated that the 9th Defendant was also granted land by Lagos State Government vide 2 Certificates of Occupancy's and a portion of same is within the Claimant's land. The said parcel of land granted to the 9th Defendant has been fenced with barbed wire and the Lagos State Government warned the Claimant's against trespassing same.

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W3 also stated that the gazettee relied upon as authority for acquisition excluded the rights and interest of established Villages in acquisition the whole land was not utilized for a public purpose for

- (1) Established villages were excluded and the Oluwa Village was established since 1850.
- (2) No notice was served on any member of the Oluwa Family before or after 1993.

Under cross-examination by the 1st and 2nd Defendant he confirmed that he is a descendant of Pa Oshoniyi Jagun of Oluwa lineage.

He stated that he was aware of the acquisition but he did not know what the land was to be used for even though he is an enlightened person.

He reiterated that no notice was served on them and he was aware of Judgement including the 5th - 8th Defendants and Lagos State Government.

He also stated that when they became aware of the acquisition they approached Lagos State Government for compensation which was not paid but he can't remember the date.

I further that his family were original owners of the land and in 1993 the land was cleared, thick bushes and no roads and there was no schools or government buildings and a supermarket on the land.

On 19th February, 2015 DW1 Michael Adebisi Alonge a land surveyor from the office of Surveyor General adopted his statement on oath and stated as part of his agenda to develop Lagos State a vast area of land was acquired in the Mainland about 823 km and it includes the land in dispute.

The Surveyor General is responsible for the survey of all parcels of land in Lagos State.

He assigned the duty to draw up and produce composite plans of any parcel of land in Lagos State government.

The Surveyor General requested for a report on the validity of the composite plan prepared by Adeleke Adesina dated 1st March, 2012 and another survey plan in relation to the land the subject matter of the suit and a report was produced dated 23rd March, 2012. He stated that he prepared a report relating to Abijo Residential Land and it was admitted in Evidence Act DW1A.

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The report showed that the record copy of Ojedengbe's survey plan dated 6th June 1992 and Adeleke Adesina's composite plan dated 1st March, 2012 was not lodged in the Surveyor General's office and thus their veracity and validity could not be ascertained.

The report stated that on the composite plan prepared by Adeleke Adesina dated 1st March, 2012 only 3 settlements Abule Panu, Abule Oluwa and Abule Iya Oniresi were shown to fall within the land the subject matter of this suit; however their depiction did not conform to any scientific regulation as regards size or precise location.

The report concluded that the said settlements were after thoughts and never actually existed.

The report further confirmed in the report that there was a revocation of Right of Occupancy of the land in the Peninsula dated 13th May, 1993 excluding recognized existing villages and settlements which were to be formally excised and that the land the subject matter of this suit within the area where the Right of Occupancy was revoked and the various plots had been designated into different users housing, commercial, industrial, Tourism and recreation.

The report further stated that the subject matter of this suit according to the report fell within the Abijo Residential Scheme and Atlantic Beach Resort.

Under Cross-examination, he stated that in his statement of oath he refers to an acquisition while the gazette Exhibit DW2 refers to a revocation and that it was due to the revocation that the land was allocated to other persons and EIB 9th Defendant was given 250 hectares and that the Claimant's claim is for 87 hectares and that the Lagos State Government has settled with the family of Idi-Oni.

He confirmed that if property is given to one of four wives, it ceases to belong to other members of the family.

He stated the difference between revocation and acquisition and that the Lagos State Government actually revoked the interest of the people and there were certain preliminary issues that need to be addressed before a revocation can be granted.

The 9th Defendant's witness DW3 Akan Ori adopted his statement on oath and tendered 2 certificates of occupancy Exhibit 9DW1 & 2.

He stated that the 1st Defendant granted a total of 246 hectares of land to the 9th Defendant but the said land does not form part of the land being claimed as belonging to the Claimant.

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The 9th Defendant's land are covered by the survey plan attached to the Certificates of Occupancy Exhibit 9DW1 & 2.

He further stated that the Claimants are not the accredited representatives of Oshoniyi Jagun nor are they settlers in Oluwa Village that their predecessors did not own the land in dispute. He also stated the land was granted by virtue of Certificates of Occupancy's as a joint venture with Lagos State Government for the construction of lower, medium and upper income home schemes for the people of Lagos State. He also said there was no need for any publication of any notice of revocation as the said land had become vested in the 1st Defendant prior to the 1993 gazette and the decision of High Court only affected previous acts of the 1st and 2nd Defendants. He also reiterated that the lands were undeveloped and remained virgin land, they did not meet any person or development on the said land and that they want to use the law Court as an engine of fraud.

Under Cross-examination by the Claimant DW3 stated that the land granted to the 9th Defendant was 200 hectares and it does not form part of the Claimant's land.

However he does not have a composite plan nor does he have alternative traditional history in re the land.

He also stated that the joint venture agreement is not before the Court and it is not customary to mention same in a Certificate of Occupancy, and that the land was allocated after the revocation exercise.

He further stated that he is aware that interest in land is held in trust by the governor for the benefit of the people – the 1st Defendant is a trustee who is to take care of something for the legal owner. He also stated he cannot say whether it's the interest of the settlor or trustee that is superior. He reiterated that the land in question was undeveloped and the land was not granted in 2009 when the Certificate of occupancy was issued but he cannot remember the exact date.

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The case was originally closed on 23rd February, 2016 and Final Written Address were adopted by the parties and the case set down for Judgment.

Before Judgment could be delivered the 9th Defendant filed an application dated 6th February, 2017 to reopen his case and same was granted on 8th February, 2017.

The 9th Defendant proceeded to tender composite plan and report of the Survey. General and 23rd January, 2017 were admitted in evidence and marked Exhibit 9DW 3A and B.

The case was closed again on 8th February, 2017 Counsel Mr. R. A. O. Adegoke, and Mr. Jernols Olowoyeye adopted their written submissions and proffered their oral arguments. Ms. Osunusi Counsel for 1st and 2nd Defendant was taken as having been defaulted in the absence of Counsel to the 1st and 2nd Defendant.

The parties thereafter opted to explore an amicable settlement even if at this time, but on the 13th March, 2017 it was reported to the Court that settlement had completely broken down. Numerous additional authorities were filed and served.

The 9th Defendant raised a Preliminary Objection wherein he sought for the case to be dismissed or struck out pursuant to Section 16 (2a) Limitation Law 2015 based on the following grounds:

- (1) The Court lacks jurisdiction to entertain this suit.
- (2) The action is statute-barred or affected by laches or acquiescence.
- (3) The Claimants' Claims disclose no cause of action against the 9th Defendant.
- (4) The Claimants' case against the 9th Defendant is frivolous, vexatious and same constitutes an abuse of Court process.

The 9th Defendant in re his Notice of Preliminary Objection contend that the revocation of 1993, the 2nd Claimant was part of a group that challenged it in 2004 while CW3 advised he became aware in 1993 (admission against interest).

The 9th Defendant further contends that pursuant thereto the Claimants are caught by the Limitation Law Section 16(2a) which provides a 12 year period within which recovery for land is allowed. Same has expired since the cause of action arose from the date of publication i.e. 1993. They contend since the right to commence the action has been extinguished, their action is statute barred.

The Claimants are also guilty of laches and acquiescence. There is evidence that the Claimants not only were aware of the acquisition in 1993, they were evicted in 2000 and they waited until the 9th Defendant, one of the government allottees had developed the land and are caught by the doctrine of laches and acquiescence.

The 9th Defendant contends that certain facts that need to be established for the plea to succeed have been satisfied. The Claimant waited until the 9th Defendant had expended money on the land before asserting their claim and are thus guilty of laches and acquiescence and that same amounts to fraud as they intend to profit from their own wrong.

They failed to apply for compensation within the specified time and thus the land was treated as unoccupied and the 9th Defendant went into a joint venture with Lagos State Government.

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Based on the said preliminary points they urge the Court to dismiss or strike out the suit.

In their Preliminary Objection the 1st and 2nd Defendants did not make any submission in respect of same in their further written address.

The Claimants in response to the issues raised in the Notice of Preliminary Objection states as follows.

The date a cause of action arose can only be obtained from a statement of Claim and not evidence elicited during cross-examination or the statement of Defence.

The Claimants contend that since Ojuwa Village was an established Village as at 1993 it was not assumed to be part of the global acquisition, it was when a combination of facts that gives right to a complaint accrues which was 2000 when they were evicted from the land or in 2003 when the 1st Defendant alleged that the Claimants were trespassing thus the action cannot be said to be statute barred.

In respect of the issue of laches and acquiescence, the Claimant contends that the proper procedure is for the defence to be raised in the pleading so that the Claimant will have an opportunity to file a reply as an equitable defence must be

specifically pleaded and it must contain a statement of all material facts which the defence is raised.

In preliminary issue it is trite that to determine whether an action has become barred what the Court confines itself to is the averments in the pleadings. In the action whereon the claim of the Claimant and the facts giving rise to the claim have been stated in the (Statement of Claim).

Court will then consider the date the cause of action accrued, the date commenced as indicated in the Originating process. As well as the date of commencement of the action by the relevant Limitation law.

OLUJANBI VS. NALLAM A AYINDE
1 LPELR 22546 CA

It is trite that a cause of action accrues on a date when a breach or any other tortious act is committed by a person who is adversely affected by the act of another to seek redress in law.

OLUJANBI VS. O'SILVAMAY INT LTD
1 LPELR (PART 580) page 588

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In the factual situation the Claimant relies on to support his claim

OLUJANBI VS. NAT. SALARIES INCOME AND WAGES COMM.
1 LPELR (PART 585 PAGE 54E.

It is also trite that in determining the date of accrual of cause of action the law is settled that it is the averment or deposition in the processes filed by the Claimant that should be relied upon -Writ /Statement of Claim or deposition in affidavit of an Originating motion determines the date the cause of action accrues.

Where the Defendant joins issues or challenges the date stated by the Claimant the date of cause of action must be determined by hearing both parties and based on credible evidence adduced before the Court.

The determination cannot in law be made on the averment or deposition of the Claimant/Respondent alone.

OLUJANBI VS. UDOJICE ENEMINI VS. ALOCHUKWU EZE ONYEKE
3 LPELR 46171 (CA)

Court is enjoined to determine the dispute as to when the cause of action accrued on the parties from evidence proffered in respect of the issue.

OLUJANBI VS. NRC
3 LPELR 22065 (CA)

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This case was filed in 2000. Section 16(2) of the Limitation law enjoins that cases for recovery of land should be filed within 12 years.

When did the cause of action accrue. There is a dispute on this while the Claimant says it is 2000 when the families were evicted from the land, while the 5th Defendant contends it was in 1993 when the global acquisition took place.

The Court observes that it is when this issue is raised at the inception of a case that the Court is limited or restricted to the Writ/ Statement of Claim, is not forever as postulated by Claimant's Counsel. Once there is dispute, evidence must be elicited on the issue and same will be determined by credible evidence adduced before the Court.

From the evidence before the Court each side more or less adduced evidence in respect/ support of its own stand, joint leaving only the evidence of CW3 who said:

"I am aware and I know about the acquisition of Ibeju Lekki and do not know the exact time it came to my knowledge in 1993."

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The 5th Defendant's Counsel has made heavy weather about the said piece of evidence that was elicited during cross-examination about it being an admission against interest and that same can be relied upon whether pleaded or not while the Claimants insist that such evidence must be pleaded and if the Defendant wanted to utilize it, it should have amended its pleadings.

The Court finds that CW3 stating that "I know about the acquisition of Ibeju Lekki -it came to my knowledge in 1993" does not amount to a factual situation that will result in an aggrieved party approaching the Court for redress.

This is because the evidence put forward by the Claimant is that as much as they were aware of a global acquisition they assumed they were exempt being an established village/settlement since 1850, to the mind of the Court it was when they were actually evicted from the land in 2000 that they came to the realisation that they were included (even though it took them another 9 years to file action) their right has not been extinguished by the Limitation law.

The Court finds that the cause of action in this case accrued in 2000 when the Oluwa family was evicted from land in question especially as there is no evidence that they were served with a notice of revocation/acquisition.

The Court holds that this case is not statute barred and the said head of objection is overruled.

On the issue of laches and acquiescence

The 9th Defendant has also raised in his Preliminary Objection that the Claimant's right is extinguished by laches and/or acquiescence, they argue that the 1st and 2nd Defendants

effective possession of the land is dispute since 2000 and the Claimant failed to step till 2009 which delay gave the 9th Defendant the confidence to enter into a lease with Lagos State Government.

Defendant to sustain a plea of laches and acquiescence must prove the following:

- 1) Person seeking to set up the plea must have made a mistake as to his legal right.
- 2) He must have expended some money or done some act on the faith of his mistaken belief.
- 3) The person whose right has been infringed must know of the existence of his own right which is inconsistent with the right mistakenly claimed by the person seeking to set up the plea.
- 4) Person whose right has been infringed must have encouraged the person seeking to set up the plea of acquiescence in the latter's expenditure of money or in other acts which he has done whether directly or by abstaining from asserting his legal rights.

If these entire elements exist it is deemed that there is fraud of such a nature as will cause the Court to restrain the possessor of the legal right from exercising it.

SODSPOWER AWOMUKU VS. CHIEF SUNDAY AWOMUKU
PELR 22505.

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The Court finds that for the purpose of this discourse the 9th Defendant can be said to have made a mistake as regards his legal right, they state they have entered into a joint venture with Lagos State Government for the construction of low, medium and high cost houses and that they had developed the land based on the mistaken belief that they had the right.

The Claimant were definitely aware of the existence of their own right over the land and the 9th Defendant's claim was definitely inconsistent.

When exactly did the Claimant become aware of the existence of the 9th Defendant's interest they were aware of the Lagos State Government's claim since 2000 and when did they become aware of the 9th Defendant when did they take steps against the 9th Defendant.

From the time of Lagos State Government they waited a whole 9 years this is an unreasonable delay and the Court finds that the Claimants were extremely tardy on this.

There is however no evidence that they encouraged the 9th Defendant to expend money over steps on the land directly although by abstaining from exercising their right, it could amount to tacit encouragement.

could be noted that the Joint Venture agreement was never put before the Court in order so as to determine the time, no evidence of their signboard on the land neither are any direct fact evidence in respect of the extent or level of development or the out of pocket expenses.

could be noted that the 9th Defendant was not an original party in this suit and it was well known that they were joined in this suit.

Court finds that since the Claimants were not aware of the 9th Defendants existence cannot be said to be guilty of laches and acquiescence, assuming the plea was put by Lagos State Government, the 1st and 2nd Defendants herein there is ample evidence to show that the Claimants were aware of their claim at least from 2000.

head of objection also fails due to insufficient evidence and same is hereby ruled.

main issues for determination identified by the 9th Defendant and agreed with by Claimant are as follows:-

- (1) Whether on the totality of the evidence placed before this Court, the Claimants have demonstrated their entitlement to the reliefs sought as per their writ of statement of claim.
- (2) Whether this suit is not caught by res judicata
- (3) Whether the use of the land held by the 9th Defendant is still for overriding public purpose at the Instance of the 1st Defendant

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1st and 2nd Defendant identified the issues for determination as follows:-

- (1) Whether the land, subject-matter of this suit was validly acquired by Lagos State Government by virtue of Section 28 of the Land Use Act 1918
- (2) Whether subsequent to the valid acquisition of land which includes subject-matter of this suit, compensation was paid to the original owners.

From the evidence before the Honourable Court the Claimants are entitled to the reliefs sought.

Court formulates the issues for determination as follows:-

- (1) Whether there was a valid revocation/acquisition of the land the subject matter of this suit
- (2) Whether the Claimants are entitled to the reliefs in their writ of summons /statement of claim.

By virtue of gazette Exhibit C1, the large expanse of land at Ibeju Lekki was
of the Lagos State Government.

It is to be determined if whether the Claimant's parcel of land (Olawa Village
area) was validly acquired vide the said publication. Revocation must comply
with the provisions of Section 28 of Land Use Act noncompliance renders it

WSHOP VS REGYS TRUSTEES OF MUSLIM COMM. IN RIVER STATE
AWLR (PART 992) 530

It is to be due compliance with the provisions of Land Use Act and the conditions are

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Adequate notice of revocation must be given to the holder whose name and
address are well-known to the public officer section 28(6) and (7) LUA 1978
Section 44(e) allows the said notice to be left at the premises subject of
revocation or by affixing it to some conspicuous part of the said premises
where it is not practicable to ascertain the name and address of the
holder.

NETWORK SECURITY LTD VS. ALHAJI UMARU DAHIRU
2007 LPELR 8852 (CA)

Also the revocation must be for an overriding public interest Section 28 (2)
LUA.

**EXECUTORS OF ESTATE OF GEN SANI ABACHA (DECD) VS. EKE-
SPIFF**
2001 2-3sc (part 1135)
DUNEX NIG. PLC VS. HIS HIGHNESS J. A. ADEMOYE
2014 LPELR 235 18 CA

It is also vital that for revocation to be valid the holder and occupier shall be
entitled to compensation for the value at the date of revocation of their
unexhausted improvement

or compensation is mandatory

RYNDONG VS. GOVT OF ADAMAWA STATE
2014 LPELR 2426 (CA)

It finds that there no direct evidence to show service of notice of revocation on
page Even if there was nobody service could have been effected in line with the
of Section 46 (e) Land Use Act by addressing it to the holder or occupier.
It of DW2 that notices were served on heads and leaders of Villages who were

Atty

ready and available to receive service is not in line with the provisions of the Land Use Act and the court finds that notice was not served on the Oluwa Village.

The knowledge of CW2 and CW3 of 1995 revocation is not equivalent to or tantamount to service of notice and cannot take its place.

The Court finds notice was not served in line with the provision of the Land Use Act.

It is true that they are entitled to be served and service on other settlements or families e.g. Ikororo Village are not equivalent to service on the Oluwa Village.

SEE

LATEJO VS. PRDAYO
2013 LPELR 8760 CA

where it was held that there can be no valid revocation where the holder has not been served with the notice.

The next question is have they slept on their rights Counsel for the 1st and 2nd Defendants submissions on laches and acquiescence point in this direction.

This to the mind of the Court would have been a valid and sustainable defence if only it was pleaded with particulars and canvassed during the trial by the 1st and 2nd Defendants.

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It can be imported into this case at this last stage as the proper procedure is for the defence to be raised in the pleading so that Claimants will have an opportunity to file a reply.

On the issue of the land being utilised for the purpose it was acquired the Lagos State Gazette by which entire land being claimed by the Claimants was acquired by the 1st Defendant is Exhibit DW2 Notice of Revocation of Right of Occupancy. the said Exhibit DW2 recouited the purpose for which the land was earlier acquired in 1981, namely

- (a) For the Construction of Lower, Medium and Upper Income Housing Schemes;
- (b) For the Construction of Schools and Hospitals; and
- (c) For the Private Estate Developers' Scheme

There is no doubt that the above are overriding public interests. By Section 14(2)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended,) It is part of the Fundamental Objectives and Directive Principles of State Policy that "the security and welfare of the people shall be the primary purpose of government". In fulfillment of this, the Constitution, by Section 16 (2) (d), mandates government to provide "suitable and adequate shelter" for all citizens.

[Handwritten Signature]

and of the above, the government of Lagos State went into joint venture with respondents with the capacity to assist the government fulfill its housing obligations. The current transaction is one. In paragraph 7 of the Amended Statement of the 9th Defendant pleaded that -

The said parcel of land was granted to the 9th Defendant to further a joint venture between the Government of Lagos State and the 9th Defendant for the execution of Lower, Medium and upper Income Housing Schemes for the people of Lagos State and it is by way of assurance from the Government of Lagos State at the aforesaid Certificates of Occupancy were issued".

The court finds that the averment by 9th Defendant was not categorically denied by the 1st and neither was any evidence led to rebut same.

The court observes that the joint venture agreement was not tendered and neither was same proffered of the stage of development of these houses if any.

Since the 9th Defendant's averment was not controverted or contradicted the burden on the 9th Defendant is minimal.

The court finds that the land was acquired for public interest and the Joint Venture with respondents is for the provision of housing for the people of Lagos State Government and is being utilised for the public interest as it is a joint development with the Lagos State Government even though it is not for government alone it still amounts to public purpose.

VS. FFC
HMLR (PART 50.) 413

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The court established that it does not matter that it is only a small portion that is being acquired for the public purpose or that it had been acquired over a long period and was not used.

DO VS. A. G. ANAMARA
HMLR (PART 114B) PAGE 182

The court finds that the acquisition is for a bonafide public purpose - provision of housing for residents of Lagos State.

The court is vague in fact it is specific as regards the varied nature of housing it is to provide for the benefit of the public at large not just a section of the populace.

1 BELLO VS. DIOCESAN SYNOD OF ALAGOS
SCC 137

It has been held that acquired land, allocated to companies for development pursuant to a layout for a residential scheme of government qualifies as public use.

OLUWA VS. A.G ANAMBRA
1998 21 NWLR (PART 573)

It actually falls within Section 51 (g) and (h) Land Use Act which provides for obtaining control over land required for or in connection with planned urban or rural development or settlement, for obtaining control over land required for or in connection with economic industrial or agricultural development.

The Claimant claim are for certain declaratory orders, injunction, other restraining orders and also damages for trespass.

The Court has overruled the grounds in the preliminary objection raised by the 9th Defendant.

The Court has also found that the revocation was for a public purpose and is being utilized for a public purpose vide the 9th Defendant.

The Court however found that the revocation exercise did not comply with the provision of the Land Use Act as regards issuance and service of notice on the holder of the right of occupancy or on the issue of compensation pursuant thereto the revocation of 1993 in respect of the Oluwa Family is invalid and thus of no effect.

The Order will be limited to the 9th Defendant as the 3rd -8th, and 10th have entered terms settlement.

It is true that once possession has been tampered with trespass is proved and the party will be entitled to damages and an injunctive order.

The Court thus holds in the light of the above that **CERTIFIED TRUE COPY**

- (1) None of Preliminary Objection by 9th Defendant fails and is hereby dismissed.
- (2) Claimant's claim succeeds and the Court orders as follows:
 - (i) Declaration that the Claimants are the owners of all that piece or parcel of land measuring approximately 358.344 hectares or 888.470 acres of Land at Abule Oluwa Village, Ibeju Lekki area of Lagos State.

(ii) The Land Use Act is capable of operation thus declaratory order stating it is incapable of operation on the ground of inconsistency is refused and hereby dismissed.

(iii) Declaration in respect vesting any interest in the land in any person especially the 9th Defendant being a private interest is refused and dismissed as same was vested in the 9th Defendant for a public purpose.

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(iv) Declaration that any interest acquired by the 9th Defendant either through the 1st Defendant or its designee is invalid by reason of the 1st Defendant lacking in power or authority to deprive the Claimant of the use and occupation of their land and exercise incidental right of ownership thereon and vesting same in the 9th Defendant.

(v) Declaration that any act or instrument conferring or purporting to confer any right or interest in the land of the Claimant on the 9th Defendant is null and void.

(vi) Declaration that the entry of the 9th Defendant is an unlawful act of trespass.

(vii) A sum of ₦10 Million (Ten Million Naira Only) being damages for trespass against the 1st Defendant for causing an unlawful entry into and interference with the Claimant's ownership, use of, occupation and enjoyment of land at Abule Oluwa Village, Ibeju Lekki Local Government, Lagos State by way of forceful eviction from the said land.

(viii) Order restraining the 1st Defendant as Governor of Lagos State or his designee or any one acting through or under him as his agents, privies or any one claiming through or under him from putting into possession of the Claimant's land or any part thereof and or maintaining the entry of any such person or persons including but not limited to the 9th Defendant on the said land.

(ix) An Order restraining the 1st and 9th Defendants jointly and severally from entering in or maintaining entry in the land of the Claimant or remaining thereon forthwith.



(2) An Order of perpetual injunction against the 1st, 2nd and 9th Defendant respectively or jointly and severally either by themselves or through their agencies or privies from granting entry to or sustaining entry on or claiming the right of entry or maintaining entry in respect of the Claimants land. **CERTIFIED TRUE COPY**

As above the Court reiterates as stated earlier that since pursuant to lack of adequate notice of revocation and no payment of compensation the revocation is invalid, however the fact remains it was actually acquired although illegally and its being utilized for a public purpose, will it be expedient to restrain the 9th Defendant from carrying out the development of homes for the people of Lagos State, should the 1st and 2nd Defendants not take this opportunity to compensate, the Claimant either with the proposed alternative land or otherwise.

The Court believes this option should be explored.

This shall be the Judgment of the Court.

L. O. Harrison
HON. JUSTICE L. O. HARRISON (MRS)
JUDGE
15/1/2018

115 folios ant - ₦14,600.00
for folios = ₦4,600.00

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W. A. O.
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Commissioner for Oaths
Lagos High Court
Igbosere Lagos

